IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 194 OF 2007

Mohammed Hassan Mehandi Hassan Khan ..Applicant
V/s
State of Maharashtra ..Respondent.

Mr. M.S.Mohit,Advocate for the applicant
Ms. R.M. Gadhvi, APP for the State.

WITH

CRIMINAL APPLICATION NO. 255 OF 2007

Vaijanath Dinkar Patil ..Applicant
V/s
State of Maharashtra ..Respondent.

Mr. S.R. Chitnis, Sr.Advocate with Mrs. V.R. Raje, Advocate for the applicant

Ms. R.M. Gadhvi, APP for the State.

WITH

CRIMINAL APPLICATION NO. 285 OF 2007

Mr. Sujit Anna Raje ..Applicant
V/s
State of Maharashtra ..Respondent.

Mr. Manoj Ghatage, Advocate for the applicant.

Ms. R.M. Gadhvi, APP for the State.

CORAM : J.H. BHATIA, J.
DATE : 23RD FEBRUARY, 2007

. Heard learned Counsel for the applicants and learned APP for the State. Perused relevant investigation papers.

2. The prosecution case, in brief, is that on 31/7/2006 at about 6 P.M. first informant Mohammed Tahir Sayyed Shahabuddin loaded three bundles of copper coils weighing about 7,860 Kg. worth Rs. 28,74,403/- in a truck bearing No. GJ-9-T-7371 for transporting the same from Taloja to Om Enterprises, Pragati Industrial Estate Kacch, Daman. He himself was driving the truck. When the truck reached Mumbra Panvel High Way road, opposite Agarwal Compound, one white, car which turned out to be Getz car, was following the said truck. The car over took the truck and stopped infront of the same and thus obstructed the way of truck. Five persons come out from that car and dragged the first informant out of the truck and forcibly pushed him into the car. Three of those persons were armed with revolvers and two were having knives. Some of them were speaking in Hindi and some in Marathi. They pressed the head of the first informant down and tied a handkerchief on his eyes. He was also beaten with fist and kick blows and the car was driven away. After some time the car stopped and the first informant was thrown out from the car and culprits escaped in the said car. He found himself in front of as Dargah at Ambanath Pipe line road. After that he

went to the spot and found that his truck along with contents was missing. Therefore, he first went at nearby Police Outpost and then he was taken to Manpada Police Station and there on his report crime No.I-311/2006, came to be registered for the offence punishable under Sections 341, 363,395 of Indian Penal Code r/w section 3 and 25 (c) of Arms Act, as well as provisions of Bombay Police Act.

3. During the investigation, in all 12 persons were arrested in connection with these offences. It was revealed that while five persons in the car had physically taken away the first informant and their companions had taken away the truck and thereafter the said truck and the contains were sold out to two persons who finally sold away the said truck with the contains to Mohammed Hasan, who is applicant in Application No. 194/2007. According to the prosecution after receipt of the said truck the copper coils were kept in some godown and the truck was dismantled. Applicant Mohammed Hasan had also purchased one more truck which was also stolen property. He had dismantled both the trucks. On the basis of information given by him, complete copper coils as well as parts of dismantled truck in this case were

recovered. Applicants, Vaijnath Patil in Criminal Application No.. 255/2007 and Sujit Anna Raje in Criminal Application No. 285/2007, are said to be main culprits, who had actually come by the car, obstructed the truck and thereafter forcibly taken away the first information in the car. According to the prosecution, all these applicants were identified as such during the tests identification parade held and conducted by the Tahasildar-Cum-Executive Magistrate in jail premises.

4. Mr. Chitnis, learned Senior Counsel for the applicant Vaijnath and Mr. Manoj Ghatage, learned Counsel for the applicant Sujit Rane vehemently contended that identification parade was not held properly and as per the guide-lines given in the High Court Mannual for the purpose of holding test identification parade. Mr. Ghatage contended that there was a long delay in holding identification parade in case of Sujit Rane and its value is lost. Mr. Chitnis contended that test identification parade appears to have been arranged and conducted by the police itself and panchas were also called by police and not by the Executive Magistrate. Further he contends that during the identification parade the specific role

played by each of the accused was not mentioned. He contends that there is no recovery from the applicants and the identification parade is faulty. Hence, there can be no justification to refuse the bail to the present applicants. Ms. Gadhvi, learned APP contends that from applicant Vaijnath one chopper was recovered.

5. Admittedly, though five culprits, who had come out from the car, were armed with revolvers and knives, weapons were not actually used by any of them. There is no reference of chopper in the FIR. Therefore, recovery of chopper itself may not be given much importance at this stage. However, after going through the complete record particularly the FIR, seizure of the property and identification parade at this stage it cannot be concluded that the test identification parade was not held properly. It may be that the assistance of the police was taken for the purpose of calling the panch witnesses etc. but the record reveals that the identification parade in respect of the applicants was held by the Executive Magistrate, who is a revenue officer and not by any police officer. Record of test identification parade clearly reveals that no police officer or police man was present at the time of their

test identification parade. The Executive Magistrate had specifically asked the identifying witnesses as to whether the accused persons or their photographs were shown to them prior to test identification parade and it was confirmed that the accused persons were not shown to them nor their photographs were shown to them. In the present case, it was never alleged that any of the accused persons had actually caused any specific injury to the first informant. In a very short period five persons got down from the car and dragged him out from the truck and put him in the car. In the car his eyes were blind folded and he was driven away in the car. In such circumstances, merely because he did not specifically state what was done by each of the individual accused it would not be sufficient to throw away the the identification parade and its result, at least at this stage. Taking into consideration all the circumstances, I find that prima facie there is sufficient evidence to connect the applicants Sujit Rane and Vaijnath Patil with the commission of crime of abduction and unlawfully confining. It appears that the offence of dacoity was well planned. Therefore, 5 persons took the first informant in the car and went away and after that the truck with its contents was also

taken away from the spot within a very short period it was also disposed of. It is serious offence of high way dacoity and it will not be in the interest of justice to grant bail to the applicants at this stage.

6. Applicant Mohammed Khan is receiver of the stolen property. The offence against him may fall under section 411 and 412 of Indian Penal Code. It is not necessary to analyse all the niceties as to which section will be applied to him. Fact remains that he received a truck loaded with the copper coils worth more than Rs. 28 lacs and he disposed off the said property. Not only that he appears to have dismantled the truck and later on parts of the trucks were recovered on the basis of information given by him. Admittedly, one more similar offence pertaining a truck was also registered against him at the same time. It is not his case that he had purchased truck and contents lawfully. Therefore, the intention and the knowledge can be attributed to him. It is well know that the offence of theft of vehicles can thrive only with the help of the people, who are ready to receive them and to dispose of the same within a short time after dismentaling such vehicles. Thereafter it becomes almost impossible to

retrieve the stolen property. Prima facie offence committed by applicant Mohammed Khan is also serious in nature. Taking into consideration, all the circumstances the applicants do not deserve to be granted bail.

7. Mr. Chitnis, learned Senior Counsel contended that when the charge sheet is already filed and the accused are in jail for last about 4 to 5 months bail should be granted. In support of this he relied upon **Mohhamed Sayyed V/s State of Maharashtra (2002) 10 S.C. 677,** wherein accused were in custody for more than a year in offence under section 463, 467, 461, 419 r/w section 120B of IPC. The Supreme Court granted bail observing that the investigation was already completed and charge-sheet was field and what remained was only the trial. Their Lordships also observed that they did not know how long the trial would take, particularly, seeing the conditions of the trial Courts in Maharashtra. These observations were made while deciding the application on 16th February, 2001. It will be useful to note here that from April, 2002, a large number of Fast Track Courts have been established in State of Maharashtra and maximum disposal of the

Sessions case has been in Maharashtra. At present, in many of the Sessions Courts in the State, the under trial cases may be disposed off within a short period of 3 to 6 months and except in some specific categores of offences, the situation is not very different about the trial of Sessions Cases even the Sessions Court in Greater Bombay. Therefore, there is reason to believe that the trial can be commenced and disposed within a short period.

8. In view of the above circumstances, all the three applications stand rejected. The trial Court is hereby directed to expedite the trial and dispose of the case, as early as possible.

(J.H. BHATIA, J.)